

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-first Legislature First Regular Session - 2011

IN THE SENATE

SENATE BILL NO. 1016

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO FISH AND GAME; AMENDING SECTION 36-104, IDAHO CODE, TO PROVIDE  
CERTAIN LIMITATIONS ON POWERS RELATING TO THE REGULATION OF MOTORIZED  
VEHICLES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 36-104, Idaho Code, be, and the same is hereby  
amended to read as follows:

36-104. GENERAL POWERS AND DUTIES OF COMMISSION. (a) Organization --  
Meetings. The members of the commission shall annually meet at their of-  
fices and organize by electing from their membership a chairman, who shall  
hold office for a period of one (1) year, or until his successor has been  
duly elected. In addition to the regular annual meeting, to be held in Jan-  
uary, said commission shall hold other regular quarterly meetings each year  
at such places within the state as the commission shall select for the trans-  
action of business. Special meetings may be called at any time and place by  
the chairman or a majority of the members of the commission. Notice of the  
time, place and purpose of any and all special meetings shall be given by the  
secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of  
administering the policy as declared in section 36-103, Idaho Code, the com-  
mission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's  
wildlife populations in order to give effect to the policy of the state  
hereinbefore announced.

2. Hold hearings for the purpose of hearing testimony, considering  
evidence and determining the facts as to when the supply of any of  
the wildlife in this state will be injuriously affected by the taking  
thereof, or for the purpose of determining when an open season may be  
declared for the taking of wildlife. Whenever said commission deter-  
mines that the supply of any particular species of wildlife is being,  
or will be, during any particular period of time, injuriously affected  
by depletion by permitting the same to be taken, or if it should find a  
longer or different season, or different bag limit should be adopted for  
the better protection thereof, or if it finds that an open season may be  
declared without endangering the supply thereof, then it shall make a  
rule or proclamation embodying its findings in respect to when, under  
what circumstances, in which localities, by what means, what sex, and in  
what amounts and numbers the wildlife of this state may be taken.

3. Whenever it finds it necessary for the preservation, protection, or  
management of any wildlife of this state, by reason of any act of God  
or any other sudden or unexpected emergency, declare by temporary rule  
or proclamation the existence of such necessity, and the cause thereof,

1 and prescribe and designate all affected areas or streams, and close the  
2 same to hunting, angling or trapping, or impose such restrictions and  
3 conditions upon hunting, angling or trapping as said commission shall  
4 find to be necessary. Every such temporary rule shall be made in accor-  
5 dance with the provisions of chapter 52, title 67, Idaho Code.

6 4. At any time it shall deem necessary for the proper management of  
7 wildlife on any game preserve in the state of Idaho, declare an open  
8 season in any game preserve as it deems appropriate.

9 5. (A) Upon notice to the public, hold a public drawing giving to  
10 license holders, under the wildlife laws of this state, the privi-  
11 lege of drawing by lot for a controlled hunt permit authorizing the  
12 person to whom issued to hunt, kill, or attempt to kill any species  
13 of wild animals or birds designated by the commission under such  
14 rules as it shall prescribe.

15 (B) The commission may, under rules or proclamations as it may  
16 prescribe, authorize the director to issue additional controlled  
17 hunt permits and collect fees therefor authorizing landowners of  
18 property valuable for habitat or propagation purposes of deer, elk  
19 or antelope, or the landowner's designated agent(s) to hunt deer,  
20 elk or antelope in controlled hunts containing the eligible prop-  
21 erty owned by those landowners in units where any permits for deer,  
22 elk or antelope are limited.

23 (C) A nonrefundable fee as specified in section 36-416, Idaho  
24 Code, shall be charged each applicant for a controlled hunt per-  
25 mit. Successful applicants for controlled hunt permits shall be  
26 charged the fee as specified in section 36-416, Idaho Code. Ad-  
27 ditionally, a fee may be charged for telephone and credit card  
28 orders in accordance with subsection (e)11. of section 36-106,  
29 Idaho Code. The department shall include a checkoff form to allow  
30 applicants to designate one dollar (\$1.00) of such nonrefundable  
31 application fee for transmittal to the reward fund of citizens  
32 against poaching, inc., an Idaho nonprofit corporation. The net  
33 proceeds from the nonrefundable fee shall be deposited in the fish  
34 and game account and none of the net proceeds shall be used to pur-  
35 chase lands.

36 (D) The commission may by rule establish procedures relating to  
37 the application for the purchase of controlled hunt bonus or pref-  
38 erence points by sportsmen and the fee for such application shall  
39 be as specified in section 36-416, Idaho Code.

40 6. Adopt rules pertaining to the importation, exportation, release,  
41 sale, possession or transportation into, within or from the state of  
42 Idaho of any species of live, native or exotic wildlife or any eggs  
43 thereof.

44 7. Acquire for and on behalf of the state of Idaho, by purchase, condem-  
45 nation, lease, agreement, gift, or other device, lands or waters suit-  
46 able for the purposes hereinafter enumerated in this paragraph. When-  
47 ever the commission proposes to purchase a tract of land in excess of  
48 fifteen (15) acres, the commission shall notify the board of county com-  
49 missioners of the county where this land is located of the intended ac-  
50 tion. The board of county commissioners shall have ten (10) days after

official notification to notify the commission whether or not they desire the commission to hold a public hearing on the intended purchase in the county. The commission shall give serious consideration to all public input received at the public hearing before making a final decision on the proposed acquisition. Following any land purchase, the fish and game commission shall provide, upon request by the board of county commissioners, within one hundred twenty (120) days, a management plan for the area purchased that would address noxious weed control, fencing, water management and other important issues raised during the public hearing. When considering purchasing lands pursuant to this paragraph, the commission shall first make a good faith attempt to obtain a conservation easement, as provided in chapter 21, title 55, Idaho Code, before it may begin proceedings to purchase, condemn or otherwise acquire such lands. If the attempt to acquire a conservation easement is unsuccessful and the commission then purchases, condemns or otherwise acquires the lands, the commission shall record in writing the reasons why the attempt at acquiring the conservation easement was unsuccessful and then file the same in its records and in a report to the joint finance-appropriations committee. The commission shall develop, operate, and maintain the lands, waters or conservation easements for said purposes, which are hereby declared a public use:

(A) For fish hatcheries, nursery ponds, or game animal or game bird farms;

(B) For game, bird, fish or fur-bearing animal restoration, propagation or protection;

(C) For public hunting, fishing or trapping areas to provide places where the public may fish, hunt, or trap in accordance with the provisions of law, or the regulation of the commission;

(D) To extend and consolidate by exchange, lands or waters suitable for the above purposes.

8. Enter into cooperative agreements with educational institutions, and state, federal, or other agencies to promote wildlife research and to train students for wildlife management.

9. Enter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of wildlife rearing, propagating, management, protection and demonstration projects.

10. In the event owners or lawful possessors of land have restricted the operation of motor-propelled vehicles upon their land, the commission, upon consultation with all other potentially affected landowners, and having held a public hearing, if requested by not less than ten (10) residents of any county in which the land is located, may enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat. Provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.

(A) The landowners, with the assistance of the department, shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the areas

to which the restrictions apply. Provided, however, that nothing in this subsection shall allow the unlawful posting of signs or other information on or adjacent to public highways as defined in subsection (5) of section 40-109, Idaho Code.

(B) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range management operations.

(C) No person shall violate such restrictions on the use of motor-propelled vehicles or tear down or lay down any fencing or gates enclosing such a restricted area or remove, mutilate, damage or destroy any notices, signs or markers giving notice of such restrictions. The commission may promulgate rules to administer the restrictions and cooperative agreements addressed in this subsection.

11. Capture, propagate, transport, buy, sell or exchange any species of wildlife needed for propagation or stocking purposes, or to exercise control of undesirable species.

12. Adopt rules pertaining to the application for, issuance of and administration of a lifetime license certificate system.

13. Adopt rules governing the application and issuance of permits for and administration of fishing contests on waters under the jurisdiction of the state. The fee for each permit shall be as provided for in section 36-416, Idaho Code.

14. Adopt rules governing the application for and issuance of licenses by telephone and other electronic methods.

15. Enter into agreements with cities, counties, recreation districts or other political subdivisions for the lease of lands or waters, in accordance with all other applicable laws, including applicable provisions of titles 42 and 43, Idaho Code, to cost-effectively provide recreational opportunities for taxpayers or residents of those local governments or political subdivisions.

(c) Limitation on Powers.

1. Nothing in this title shall be construed to authorize the commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law.

2. Neither the department of fish and game, nor the commission, shall promulgate any rules:

(A) Prohibiting the use of motorized vehicles, including all-terrain vehicles, utility type vehicles and off-highway vehicles, on established highways, roads, trails or other areas open for motorized travel that are maintained, controlled or located on federal, state or county owned lands or rights-of-way, but not to include highways, roads, trails or other areas owned or leased by the department of fish and game; or

(B) Defining the use of a motorized vehicle as a "method of take" or "aid to hunting."

These prohibitions shall not limit the department or commission's authority as otherwise provided by law to regulate hunting from a motorized vehicle or restrict the department or commission's authority in

1        enforcement of unlawful methods of take as provided in section 36-1101,  
2        Idaho Code.

3        (d) Organization of Work. The commission shall organize the depart-  
4        ment, in accordance with the provisions of title 67, Idaho Code, into admin-  
5        istrative units as may be necessary to efficiently administer said depart-  
6        ment. All employees of the department except the director shall be selected  
7        and appointed by the director in conformance with the provisions of chapter  
8        53, title 67, Idaho Code.